

equipment is already in place and is otherwise operating properly. We believe that a cable operator should not be required to incur such equipment improvement expenses when it is mandated to retransmit a particular television signal on its cable system.^{53/}

NAB also asserts that “[t]he key question is whether a good quality signal is present at the designated local receive facility -- even if the satellite carrier has decided, for business reasons, to relocate the uplink facility.”^{54/} While it is true that it is the station’s responsibility to deliver a good quality signal to the receive facility, that should not obscure the fact that SHVIA gives the DTH provider the sole authority to designate the location of the local receive facility, as explained above in Section II(C)(3) and (4). The location in a DMA may have to be changed due to any number of valid reasons, such as loss of legal access to the site, the development of new technology or the technical infeasibility of the site. Consistent with the SHVIA policy that the DTH provider designates the location of the local receive facility, the DTH provider must remain free to change this point and, consistent with the cost allocation policy set forth in SHVIA, stations must bear the burden of delivering a good quality signal to the new local receive facility location.

In fact, the two cases cited by NAB on this point^{55/} are favorable to the cable system, not the television station, supporting the cable system’s discretion to designate its principal headend or headends to which local signals of acceptable quality must be delivered. In *Paxson Salt Lake City License, Inc.*, the Deputy Chief, Cable Services Bureau, denied a station’s request for reconsideration of a denial of must-carry status. At issue was the Commission’s general

^{53/} *Id.* at 2991.

^{54/} NAB Comments, at 14.

^{55/} *Paxson Salt Lake City License, Inc.*, *supra*, and *Family Stations, Inc.*, 10 FCC Rcd 1672 (1995).

requirement that cable systems “cooperate fully” with stations seeking mandatory carriage to avoid depriving them of must-carry rights. The station argued that the full cooperation standard required the cable system to accept delivery of its signal at a location (Clarkston Ridge) that was operated by the cable system, but that was *not* its principal headend location. The station argued that the cable system was “obligated to make its existing cable plant and the method of reception it routinely utilizes for other similarly situated broadcast stations available to Paxson.”^{56/} The Commission rejected these arguments.

The cooperation expected of a cable operator, however, is not required when the cable operator has to employ extraordinary measures to measure signal strength. Or where, as in the instant case, the broadcast television station wants to deliver its signal to a location other than the statutorily-mandated principal headend. A cable operator’s cooperation in cases requiring extraordinary measures, as in this case, is discretionary, not mandatory. Thus, whether or not KUWB is allowed the use of the Clarkston Ridge facility is solely within Charter’s discretion. Neither the statute nor the Commission’s rules require Charter to afford such access nor do they sanction the delivery of a station’s signal to a location other than the cable operator’s principal headend. The Commission has been clear on this point. In its *Clarification Order* the Commission stated: “[a]s the statute specifies that a broadcast station must deliver a good quality signal to the principal headend of the cable system to be entitled to must-carry rights, we clarify that the designated principal headend is the appropriate location for such measurement. (Footnotes omitted).^{57/}

^{56/} 15 FCC Red at 7363.

^{57/} *Id.* The reconsideration decision also reiterates the Bureau’s conclusions in its initial order:

[W]hile [the Station] relies heavily on the *Clarification Order*’s requirement that currently non-carried stations be measured to the extent possible using equipment currently used to receive similar signals, it should be noted that this same order specifies that ‘cable operators need not employ extraordinary measures or specialized equipment when making measurement for stations that are not currently carried.’ The use of separate reception and microwave transmission equipment would fall within this category of extraordinary measures. (Footnote omitted)

Id.

Family Stations, Inc., the other case cited by NAB on the reception point issue, is similar.

There, the station argued that the cable system should be required to measure the station's signal strength from a location (Mills Peak) other than the cable system's designated principal headends. The Commission disagreed.

We are persuaded by Sonic that it made a proper designation of its principal headends. As the Commission stated in the Must Carry Order in MM Docket 92-259, 8 FCC Rcd 2965, 2968 (1993), "the 'principal' headend in the majority of systems will be the headend serving the most subscribers, accommodating the most signal processing equipment, or lying closest to the geographical center of the system." The designated principal headends picked by Sonic receive off-air signals, operate as independent systems apart from a microwave interconnect, and separate signal processing equipment is located in each of the designated principal headends. In addition, the headends are located very close to the communities they serve. In light of these factors, KFTL concedes that the Loyalton, Graeagle, Greenville, and Crescent Mills headend facilities have been properly designated as principal headends.

Nevertheless, KFTL's argues that good engineering practices require that Sonic "take into account the elevation of the Mills Peak facility and its distance from the designated headends when signal quality measurements are taken." The Commission has clarified that if signal quality "measurements were made at a designated headend that is not the current reception location (headend) for the broadcast signals, we expect the cable operator to follow good engineering practices for the measurement of the broadcast signals in question." KFTL misinterprets this standard. The Commission's rules do not require Sonic to measure station KFTL(TV)'s signal at a nonprincipal headend even if the subject signal is currently received there. Also we note that the Mill's Creek facility and the Crescent Mills mountain top facility serve the Loyalton, Portola, and Graeagle principal headends via microwave. Cable operators are not required by the Commission's rules to transport a station's signal to a cable system's headend in this manner.^{58/}

DTH providers must be accorded similar freedom in designating the signal collection point or points to which local stations seeking must-carry rights are responsible for delivering a good quality signal, as required by SHVIA. Contrary to NAB's suggestions, the burdens

^{58/} *Id.* at 7363-7364.

imposed on DTH operators for ensuring signal quality delivered by stations should be no greater than those imposed on cable operators.

D. *Limiting DTH Provider's Station Carriage Burden.*

(1) *Substantial Duplication of Commercial Station Signals.*

Network Affiliates asks the Commission to apply a “substantial duplication” test in the DTH context which is actually less restrictive than that applied in the cable context. Network Affiliates believes that substantial duplication should not be found unless there is Grade B overlap of the two station signals.^{59/} Network Affiliates confuses the *content*-based definition of duplication with the location of the duplicating stations. Under Section 338(c)(1), if there is “substantial duplication” in the *content* broadcast by two stations, and both stations are “local,” then the DTH provider does not have to carry one of the stations. SHVIA gives the Commission the liberty of defining that content which would constitute substantial duplication, but SHVIA does not permit the importation of a Grade B or other location exception to this statutory right. The two stations are either “local,” (i.e., within the DMA), or not.

(2) *Limiting DTH Provider's NCE Station Signal Carriage Burden.*

Association of America's Public Television Stations, Public Broadcasting Service and Corporation for Public Broadcasting (“Public Broadcasters”) urge the Commission to require DTH providers to carry a local noncommercial educational broadcast station (“NCE”) if it is carried by any cable system in the local market.^{60/} The Public Broadcasters note the availability of Ka-band and Ku-band capacity to show that DTH providers have more than enough capacity

^{59/} Network Affiliates Comments, at 13-14.

^{60/} Public Broadcasters Comments, at 19.

to carry all such NCE stations. But, this argument fails to recognize that a DTH provider may not have access to Ka- or additional Ku-band spectrum, and that forcing DTH providers to secure extra capacity just to offer local-into-local station carriage incents DTH providers not to offer such carriage.^{61/} That is precisely what Congress wanted to avoid.

Contrary to the statement of Public Broadcasters, Section 338(c)(2) instructs the Commission to “limit” DTH NCE carriage obligations to “the same degree” as cable systems. This is not an instruction to make a DTH provider carry an NCE if it is carried on any cable system in the DMA. Congress’s use of the word “limit” and the phrase “the same degree” is significant. In BellSouth’s opinion, it reflects Congress’s decision not to require DTH providers to carry the same NCE stations carried by cable in a DMA, but to give the FCC the flexibility to prescribe limitations which will result in the burden of NCE carriage for DTH providers being relatively comparable to the NCE carriage burden on cable systems. Echostar is correct in its view that “this is a prime example of one in which the imposition of seemingly ‘identical’ requirements would actually impose a far greater burden on satellite carriers than that imposed on cable operators, which ultimately will adversely affect the ability of satellite carriers to compete with other MVPDs.”^{62/}

Echostar’s suggestion that the Commission allow DTH providers to limit their total capacity devoted to NCE carriage reflects the multi-market nature of DTH technology, a key difference between cable and DTH. Only in this manner can the “degree” of NCE carriage burdens borne by cable and DTH approach comparability. Accordingly, BellSouth supports

^{61/} Unlike cable, any spectrum used at an orbital position by a DTH provider cannot be used by any one else at that or nearby orbital positions. Thus, quite aside from the cost of added capacity, it simply may not be available.

^{62/} Echostar Comments, at 2.

Echostar's request that the Commission limit a DTH provider's total NCE signal carriage obligation to 2% of activated channel capacity.^{63/}

E. *Channel Positioning and Nondiscriminatory Access.*

(1) *Channel Positioning.*

NAB suggests that all stations should appear on channel numbers that are in the order in which the stations appear to the over-the-air receiver.^{64/} NAB cites viewer convenience as the reason for this request. Section 338(d) is explicit that no DTH provider may be required "to provide the signals in any particular order...." The Commission cannot adopt rules directly contrary to this statutory mandate for purposes of convenience.

NAB, ALTV, Network Affiliates and Public Broadcasters also argue that the "contiguous carriage" requirement of SHVIA applies to stations without regard to whether the stations are carried pursuant to must-carry or retransmission consent.^{65/} In its comments, BellSouth urges the Commission not to require contiguous carriage of retransmission consent-carried stations because those stations have elected to handle the carriage issue by private contract. Upon reconsideration, the position advocated by NAB, ALTV, Network Affiliates and Public Broadcasters appears to have merit. For example, absent implementing this proposal of those

^{63/} This cap should be a limit only on carriage obligations, and not a limit on the number of NCE stations a DTH provider may carry voluntarily.

Further, BellSouth suggests that the 2% of capacity be measured based upon the number of activated channels, and not on a throughput capacity basis. Throughput capacity assigned to any one channel will vary based upon currently employed dynamic rate allocation programs, rendering it impossible to quantify. Further improvements in modulation technologies could render throughput capacity an even less useful measurement tool.

^{64/} NAB Comments, at 15 n.13.

^{65/} NAB Comments, at 15; ALTV Comments, at 11-16; Network Affiliates Comments, at 14-15; Public Broadcasters Comments, at 26-27.

TV station interests, stations that command a disproportionately large viewing audience in a DMA might have the power to use retransmission consent to secure the right to carriage on a more favorable channel position than the positions provided for less viewed stations. This would provide stations with larger market shares with an unintended competitive advantage that would be inconsistent with promoting the convenience of viewers and encouraging the carriage of stations by DTH providers.

- (2) *Channel Position-Related Requirement to “Provide the Signal of a Local Television Broadcast Station ... at a Nondiscriminatory Price and in a Nondiscriminatory Manner on Any Navigational Device, On-Screen Program Guide, or Menu.”*^{66/}

Section 338(d) requires DTH providers of local station signals to “provide access to such station’s signals at a nondiscriminatory price and in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu.” This requirement, however, is addressed explicitly to local station signals only, not to other programming sources (such as cable programming networks) that may be carried on the DTH platform. Indeed, in the repeated references to “discrimination” in the legislative history of SHVIA, Congress was concerned with discrimination in favor of the network affiliate and against the less-viewed broadcast stations.^{67/}

Yet, Public Broadcasters and Network Affiliates argue that the language quoted above from Section 338(d) extends beyond a comparison of the price charged the DTH subscriber to view various local stations, to a comparison of the price charged for any station signal with the price charged to view any channel offered on the DTH platform.^{68/} While the Public Broadcasters acknowledge that SHVIA does not require DTH providers to have a basic service

^{66/} Section 338(d) (capitalization of words inserted).

^{67/} See, e.g., Conf. Rep. at S14711.

^{68/} Public Broadcasters Comments, at 28-19; Network Affiliates, at 16.

tier and that DTH is not rate regulated,^{69/} its interpretation of the nondiscrimination requirement would require the use of a basic service tier.

Congress required cable systems to carry local stations on a basic tier, but made no mention of a basic service tier or rate regulation in SHVIA. Given that Congress made DTH station carriage optional, it is inconceivable that Congress would discourage this carriage by imposing a basic service tier requirement or otherwise dictating where the local stations must be placed. It stands to reason that if a DTH provider carries local stations to a DMA, it wants subscribers to have the opportunity to view the channels. Unlike cable, which is required to carry these stations, there is no reason to assume that the DTH provider will not attempt to package the local stations in a manner the provider believes will make them attractive to viewers.

Neither ALTV nor NAB urge this untenable basic service tier carriage requirement. Rather, they offer a more sensible requirement to place all station signals in a DMA on the “same package.”^{70/} Indeed, ALTV acknowledges that “[s]atellite carriers do enjoy the ability to package broadcast signals separately from other program channels and charge an additional fee for their reception....”^{71/} BellSouth agrees with NAB that the DTH provider has the right to place local signals on a pay tier, an enhanced service tier or any other tier of service as long as all local stations are on this tier and the viewing of no one station costs the viewer more than the viewing of any other station in the DMA.^{72/}

^{69/} Public Broadcasters Comments, at 29.

^{70/} ALTV Comments, at 16-19; NAB Comments, at 16.

^{71/} NAB Comments, at 18.

^{72/} NAB Comments, at 16. BellSouth is not endorsing the concept that station signals cannot be sold on an a la carte basis.

(3) *The Broadcasters Incorrectly Characterize Certain Acts as Discriminatory.*

(a) *Steps to Access Local Station Signals.*

NAB provides a list of what it regards as examples demonstrating how stations should and should not be treated to achieve Congress's objective of carriage "at a nondiscriminatory price and in a nondiscriminatory manner...."^{73/} One of those examples is to "bar satellite carriers from requiring viewers to take extra steps (e.g., mouse or remote control clicks) to obtain access to particular local stations, or from placing 'carry one, carry all' stations on different screens."^{74/} But it is not discrimination under SHVIA all carried-TV station signals are accessible in the same manner. Further, Congress expressed its desire to limit regulatory requirements in this area to encourage technological development that ultimately will enhance consumer access to TV station signals and other DTH-carried signals, consistent with Section 7 of the Communications Act.^{75/}

(b) *Special Equipment to View Local Station Signals.*

NAB also asks that the Commission bar DTH providers from transmitting local-into-local channels in a manner that requires special equipment to view the channels.^{76/} BellSouth has no fundamental problem with the concept supporting that request; that is, avoidance of discrimination *among local station signals*. This is the limit of the nondiscrimination requirement. It is designed to ensure that dominant stations in a DMA receive no better carriage treatment than other stations.^{77/} Thus, as advocated by ALTV, special equipment (such as a

^{73/} NAB Comments, at 16 (quoting 47 U.S.C. § 338(d)).

^{74/} *Id.* at 17.

^{75/} 47 U.S.C. § 157.

^{76/} NAB Comments, at 17-18.

^{77/} Conf. Rep., at S14711

second dish) may be required to view local signals as long as the special equipment is required to view all local signals in the DMA.^{78/} NAB, however, has worded its request so that it would bar the use of special equipment even if all local signals were received by the special equipment, and Network Affiliates explicitly proposes such a ban.^{79/} NAB's request, so understood, is inconsistent with the harms NAB cites which this requirement would address: that is, the need to buy equipment to "view additional channels."^{80/} NAB's request, so understood, would risk freezing technology -- a primary fear of Congress. Over time, it is likely that more and more full motion video viewing will involve the use of computer technologies. A case in point is America On Line's announcement of its project to meld TV and the Internet, a "first step" in the process of convergence of TV and the Internet.^{81/} Certainly there is an evolutionary process to this end which involves extra equipment or functions. But, that requirement should not be erected as a barrier to technological and consumer service progress and evolution. Moreover, as is a theme throughout these reply comments, the idea that DTH providers would carry TV stations and give them a subservient presentation is ludicrous and contrary to their own self-interests in competing with cable for local subscribers. If DTH providers desire to enhance local-into-local service through implementing new technologies, they should be encouraged to do so.

(c) Prominent Display of a Station's Network Affiliation.

NAB requests that television network affiliations appear prominently as part of the station's identification.^{82/} This is not technologically feasible at this time. BellSouth's program

^{78/} ALTV Comments, at 19-22.

^{79/} Network Affiliates Comments, at 16-17.

^{80/} NAB Comments, at 17 (emphasis supplied).

^{81/} "AOL to Meld TV and Internet," Washington Post, E-1 (July 27, 2000).

^{82/} NAB Comment, at 17.

guide only has four spaces for letters or numbers. For TV stations, their call letters will occupy these four spaces. Because no spaces remain, the network affiliations of those stations will not appear on the channel list. For cable programming networks, the four spaces will have letters indicating the name of the network, because there is no other identifying information which one would consider using to identify those networks. But, if the subscriber clicks on the call letters of a TV station, that act will open a window that displays the TV station call letters along with identification of its network affiliation (if any). Still, that network affiliation cannot be displayed “prominently,” as requested by NAB, because the type and size of the lettering used in this window is standardized. Thus, if “prominently” means “the same,” BellSouth’s system meets NAB’s expectations.

(4) *Open Video System Rules Should Not Be Applied to DTH Providers.*

The Network Affiliates and Public Broadcasters request the Commission to import the “open video system” (“OVS”) rules as the rules for nondiscrimination in the DTH arena.^{83/} But, those rules implement an explicitly different statutory / regulatory model for the delivery of video services, and are uniquely designed to implement that model and the combination of open video platform and cable regulatory elements contained within it. Indeed, the rules even have third-party access requirements which are not available on DTH platforms. Thus, BellSouth does not believe that applying the OVS access rules here is consistent with Congressional intent.

F. *Content to Be Carried – the Vertical Blanking Interval (“VBI”).*

BellSouth’s comments discuss the problem with adopting regulations as to what VBI-type content must be passed through by DTH providers absent knowledge of how DTH satellite technology will develop and of how the VBI will be used by broadcasters in the future. To

^{83/} Network Affiliates Comments, at 17-18; Public Broadcasters Comments, at 29-31.

expand on that theme, it should be recognized that all DTH providers use digital modulation, and there is no VBI in digital. VBI information, accordingly, must be stripped from the analog signal and re-created in a digital bit stream.

NAB wants DTH providers to carry whatever information the broadcaster may have embedded in its analog VBI.^{84/} BellSouth does not dispute the observation as to current behavior that “satellite carriers can and do carry, without significant expense, the program-related material that television stations deliver” through the VBI.^{85/} But that does not mean that different, additional or future VBI-carried information also can be carried without “significant expense” or, more importantly, without imposing significant spectrum capacity burdens.

Further, NAB’s request that the DTH provider shoulder the burden of showing technical infeasibility to carry VBI material assumes too much knowledge on the part of the DTH provider. The DTH provider may not be able to assess the difficulty of carrying any particular material, or converting it to the DTH provider’s modulation platform. For example, the technology involved in a particular VBI use may be confidential or otherwise beyond a DTH provider’s reasonable capacity to analyze. DTH providers should not be put in the position of bearing unknown burdens, or burdens which may be borne more efficiently by another interested party. To avoid a situation where VBI disputes are resolved arbitrarily on the basis of burden of proof allocations, as opposed to determining the relevant circumstances of a particular VBI application, BellSouth suggests that the Commission avoid assigning burdens of proof on technical feasibility at this early stage.

^{84/} NAB Comments, at 18-19.

^{85/} NAB Comments, at 18.

To make our point, NAB states that DTH providers should be required to carry “Transmission Signal Identifier data, as well as other extended data service packets on line 21....” It is impossible for BellSouth to know whether it is technically feasible for its platform to carry Transmission Signal Identifier data because it could be in any format and NAB points to no particular format that may be tested with BellSouth’s technical platform. Similarly, BellSouth certainly cannot predict whether it would be technically feasible to carry unidentified, and yet to be developed “other extended data service packets” which may be unrelated to the primary broadcast signal. Further, there is an economic feasibility analysis that must be considered. In short, it makes little sense to require DTH providers to carry such information at this date or to assume that they have sufficient knowledge to assess their ability to carry such information that they should bear any burden of proof on the issue.

Because broadcasters soon will cease using analog modulation, they too will cease creating a VBI. Accordingly, any expansion of this requirement sets up the situation where preserving what has been done over the VBI evolves into the duty of DTH providers to carry digital data streams created by DTV stations which may be unrelated to the primary video stream.

G. *Material Degradation.*

(1) *The Television Allocation Study Organization (“TASO”) Standard Would Be a Misplaced Anachronism If Applied to Digital DTH Service.*

Public Broadcasters advocate that the Commission establish a rule requiring DTH providers to maintain must-carry signals at a TASO Grade 2 level to avoid material degradation

of these signals.^{86/} NAB urges the Commission to use carrier-to-noise ratios, bit error rates and bit rate allocations to determine whether carried station signals have been materially degraded.^{87/}

As BellSouth stated in its comments, the adoption of signal quality standards for digital DTH signals is not warranted by the historic behavior of DTH providers, or by any realistic fear that DTH providers who voluntarily offer local-into-local station signals would compromise the quality of these signals. BellSouth noted that such standards would risk freezing technological development that is favorable to the wide availability of local-into-local signals on DTH platforms.

The concept of applying a TASO test is not only a solution in search of a problem, but an excellent example of a means to freeze technological development. The TASO grades were developed in 1959 based upon viewers' tastes and preferences in 1959. At that time, television was just beginning to gain widespread acceptance, television sets and transmitters were primitive, and television was transmitted in analog format and almost exclusively in black and white. DTH, in contrast, uses color and transmits in a digital format which is converted to analog and viewed on modern receivers that do not rely upon vacuum tube technology. The snow and interference effects that would be measured, subjectively, to determine the TASO quality of a signal simply do not exist in a digital environment. Instead, the digital picture malformations (at least in presently employed technology) are in the nature of total picture loss, block errors, tiling and other artifacts that do not occur in an analog picture and thus cannot be used to assign a TASO grade to a digital picture.

^{86/} Public Broadcasters Comments, at 25-26.

^{87/} NAB Comments, at 19-20.

(2) *Other Measures of Material Degradation Are Inappropriate.*

NAB offers criteria for measuring material degradation that are more closely aligned with the *currently-employed* digital technology, but not necessarily with changes in that technology. Moreover, the adoption of NAB's criteria could lead to a restraint on technological innovation beneficial to local-into-local station carriage and improvements in signal quality. BellSouth expects the technology of video digital transmission to improve over time, and expects that the signal quality issues surrounding digital technology will change with changes in the technology. Like TASO picture quality measurements, BellSouth expects measurements based upon NAB's identified criteria to become irrelevant. Further, NAB's suggested criteria cannot be applied properly to even today's digital technology. For example, carrier-to-noise ratio (at least today) is irrelevant to digital signal quality until it causes bit error rates. As another example, bit rate allocation will be assigned on BellSouth's currently envisioned platform on a dynamic, "as needed," basis. Just because one channel has less bits allocated to it at any point in time than other channels does not indicate that the channel might be subject to material degradation.

Comments on behalf of the television industry universally urge that the material degradation standard in the Cable Act must be transported into the DTH context without any variation. But, those comments fail to appreciate that Section 338(g) requires only that the Commission adopt regulations "comparable" to those applicable to cable systems, not identical. Thus, in this absence of clear Congressional direction, the Commission is accorded discretion to implement the DTH material degradation requirement in ways that may very well differ from the cable context. Contrary to ALTS, the language of the Conference Report urging the Commission to allow DTH providers to use reasonable compression and other techniques to meet DTH carriage obligations should be heeded and understood in the context of the antidiscrimination

provision of Section 338(d), which requires that station signals be treated alike.^{88/} Technical equivalence between station signals and non-station signals is not what Congress had in mind. Otherwise, the Conferees would not have urged the Commission to allow DTH providers to use differing processes and compression techniques to accommodate more local-into-local signals.

H. *DTH Providers Should Not Be Required to Carry Both the Digital and the Analog Signals of Stations.*

ALTV and NAB request the Commission to postpone its decision on the carriage of digital television signals by DTH providers. BellSouth recognizes that DTV carriage involves complex issues that are not ripe for determination now. But, dual carriage by DTH providers is not a complex issue, would violate SHVIA, will have an immediate and deleterious effect on the DTH provider's willingness and ability to devote channel capacity to local station carriage, and can be decided now without also deciding other issues in the DTV carriage proceeding.

DTH providers are planning the carriage of stations in DMAs based upon known available channel capacity. If DTH providers could be required to carry two signals for each station carried, then the planning process must consider the possible capacity effects of these requirements. If this proceeding does not address these issues, DTH providers will be forced to be more conservative in carrying local stations. Otherwise, legitimate business concerns could force the DTH provider to cease local-into-local station carriage in some percentage of its DMAs to accommodate dual signal carriage. Congress enacted SHVIA to promote local-into-local carriage. Delaying a decision on dual-carriage would be contrary to that intent. The goodwill DTH providers have strived so hard to develop with consumers would be severely tarnished, as subscribers who had incurred the expense to buy and install a DTH receiver expecting to receive

^{88/} ALTV Comments, at 35.

local signals would be disappointed. The resulting public relations nightmare would not be the DTH provider's alone, but also would be that of the Commission as it attempts to convince the American public that satellite carriers should be allowed to drop original television signals so that they can fulfill their obligation to carry duplicate television signals.

- I. *A DTH Provider Should Not Be Considered to Have Violated Any Commission Regulation Implementing SHVIA Until the Issue Has Been Adjudicated, The Commission Orders Action by the DTH Provider and the DTH Provider Fails to Complete the Action by the Time Allowed in the Commission's Order.*

ALTV and Network Affiliates remind the Commission that the DTH compulsory license is revoked if the DTH provider violates any of the Commission's regulations implementing SHVIA.^{89/} As stated earlier in these reply comments, that result would be draconian, would not be in the public interest and would raise questions of due process. It means that the DTH provider is subject to copyright infringement liability, and must cease local-into-local service in the DMA to consumers who are going to have a very hard time understanding why this statutory scheme should cause them inconvenience. This penalty, moreover, may have absolutely no relationship to the gravity of the violation. A relatively immaterial violation would result in this penalty. Indeed, there will be certain regulatory requirements that involve third party cooperation or that are vague.

It is for these reasons that BellSouth proposes that the Commission establish a rule that a DTH provider will not be considered in violation of a SHVIA regulation until after (1) the Commission finds that the DTH provider is not in compliance, (2) the Commission issues an order requiring the DTH provider to take or to refrain from taking appropriate action, and (3) the DTH provider fails to comply with the order within the time required by the Commission.

^{89/} ALTV Comments, at 47 n.98; Network Affiliates Comments, at 24.

III. CONCLUSION

For all of the foregoing reasons, BellSouth requests that the Commission adopt signal carriage rules and policies consistent with its initial comments and these reply comments.

Respectfully submitted,

BELLSOUTH CORPORATION
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By:

A handwritten signature in cursive script, appearing to read "Charles P. Featherstun", followed by a circled "TD".

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August 4, 2000

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CERTIFICATE OF SERVICE

I, Jennifer L. Roy certify that I have this 4th day of August, 2000, caused to be sent by first-class U.S. mail, postage-prepaid, a copy of the foregoing Reply Comments to the following:

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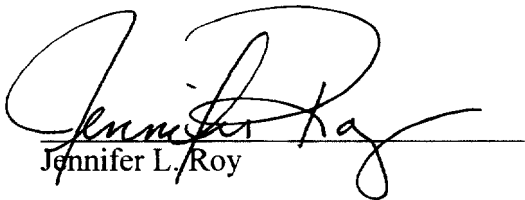
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